§ 405.507 Illustrations of the application of the criteria for determining reasonable charges.

The following examples illustrate how the general criteria on customary charges and prevailing charges might be applied in determining reasonable charges under the supplementary medical insurance program. Basically, these examples demonstrate that, except where the actual charge is less, reasonable charges will reflect current customary charges of the particular physician or other person within the ranges of the current prevailing charges in the locality for that type and level of service:

The prevailing charge for a specific medical procedure ranges from $80 to $100 in a certain locality.

Doctor A's bill is for $75 although he customarily charges $80 for the procedure.

Doctor B's bill is his customary charge of $85

Doctor C's bill is his customary charge of $125

Doctor D's bill is for $100, although he customarily charges $80, and there are no special circumstances in the case.

The reasonable charge for Doctor A would be limited to $75 since under the law the reasonable charge cannot exceed the actual charge, even if it is lower than his customary charge and below the prevailing charges for the locality.

The reasonable charge for Doctor B would be $85, because it is his customary charge and it falls within the range of prevailing charges for that locality.

The reasonable charge for Doctor C could not be more than $100, the top of the range of prevailing charges.

The reasonable charge for Doctor D would be $80, because that is his customary charge. Even though his actual charge of $100 falls within the range of prevailing charges, the reasonable charge cannot exceed his customary charge in the absence of special circumstances.

§ 405.508 Determination of comparable circumstances; limitation.

(a) *Application of limitation.* The carrier may not in any case make a determination of reasonable charge which would be higher than the charge upon which it would base payment to its own policyholders for a comparable service in comparable circumstances. The charge upon which it would base payment, however, does not necessarily mean the amount the carrier would be obligated to pay. Under certain circumstances, some carriers pay amounts on behalf of individuals who are their policyholders, which are below the customary charges of physicians or other persons to other individuals. Payment under the supplementary medical insurance program would not be limited to these lower amounts.

(b) *When comparability exists.* ''Comparable circumstances,'' as used in the Act and this subpart, refers to the circumstances under which services are rendered to individuals and the nature of the carrier's health insurance programs and the method it uses to determine the amounts of payments under these programs. Generally, comparability would exist where:

(1) The carrier bases payment under its program on the customary charges, as presently constituted, of physicians or other persons and on current prevailing charges in a locality, and

(2) The determination does not preclude recognition of factors such as speciality status and unusual circumstances which affect the amount charged for a service.

(c) *Responsibility for determining comparability.* Responsibility for determining whether or not a carrier's program has comparability will in the first instance fall upon the carrier in reporting pertinent information about its programs to the Centers for Medicare & Medicaid Services. When the pertinent information has been reported, the Centers for Medicare & Medicaid Services will advise the carrier whether any of its programs have comparability.

§ 405.509 Determining the inflation-indexed charge.

(a) *Definition.* For purposes of this section, *inflation-indexed charge* means the lowest of the fee screens used to determine reasonable charges (as determined in § 405.503 for the customary charge, § 405.504 for the prevailing charge, this section for the inflation-indexed charge, and § 405.511 for the lowest charge level) for services, supplies, and equipment reimbursed on a reasonable charge basis (excluding physicians' services), that is in effect on December 31 of the previous fee screen

year, updated by the inflation adjustment factor, as described in paragraph (b) of this section.

(b) *Application of inflation adjustment factor to determine inflation-indexed charge.* (1) For fee screen years beginning on or after January 1, 1987, the inflation-indexed charge is determined by updating the fee screen used to determine the reasonable charges in effect on December 31 of the previous fee screen year by application of an inflation adjustment factor, that is, the annual change in the level of the consumer price index for all urban consumers, as compiled by the Bureau of Labor Statistics, for the 12-month period ending on June 30 of each year.

(2) For services, supplies, and equipment furnished from October 1, 1985 through December 31, 1986 the inflation adjustment factor is zero.

(c) The inflation-indexed charge does not apply to any services, supplies, or equipment furnished after December 31, 1991, that are covered under or limited by the fee schedule for physicians' services established under section 1848 of the Act and part 415 of this chapter. These services are subject to the Medicare Economic Index described in §415.30 of this chapter.

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§405.511 Reasonable charges for medical services, supplies, and equipment.

(a) *General rule.* (1) A charge for any medical service, supply, or equipment (including equipment servicing) that in the judgment of CMS generally does not vary significantly in quality from one supplier to another (and that is identified by a notice published in the FEDERAL REGISTER) may not be considered reasonable if it exceeds:

(i) The customary charge of the supplier (see §405.503);

(ii) The prevailing charge in the locality (see §405.504);

(iii) The charge applicable for a comparable service and under comparable circumstances to the policyholders or subscribers of the carrier (see §405.508);

(iv) The lowest charge level at which the item or service is widely and consistently available in the locality (see paragraph (c) of this section); or

(v) The inflation-indexed charge, as determined under §405.509, in the case of medical services, supplies, and equipment that are reimbursed on a reasonable charge basis (excluding physicians' services).

(2) In the case of laboratory services, paragraph (a)(1) of this section is applicable to services furnished by physicians in their offices, by independent laboratories (see §405.1310(a)) and to services furnished by a hospital laboratory for individuals who are neither inpatients nor outpatients of a hospital. Allowance of additional charges exceeding the lowest charge level can be approved by the carrier on the basis of unusual circumstances or medical complications in accordance with §405.506.

(b) *Public notice of items and services subject to the lowest charge level rule.* Before the Secretary determines that lowest charge levels should be established for an item or service, notice of the proposed determination will be published with an opportunity for public comment. The descriptions or specifications of items or services in the notice will be in sufficient detail to permit a determination that items or services conforming to the descriptions will not vary significantly in quality.

(c) *Calculating the lowest charge level.* The lowest charge level at which an item or service is widely and consistently available in a locality is calculated by the carrier in accordance with instructions from CMS as follows:

(1) *For items or services furnished on or before December 31, 1986.* (i) A lowest charge level is calculated for each identified item or service in January and July of each year.

(ii) The lowest charge level for each identified item or service is set at the 25th percentile of the charges (incurred or submitted on claims processed by the carrier) for that item or service, in the locality designated by the carrier for this purpose, during the second calendar quarter preceding the determination date. Accordingly, the January calculations will be based on charges for the July through September quarter of the previous calendar year, and the July calculations will be based on charges for the January through March quarter of the same calendar year.